

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

Claims 16-35 are pending. Claims 16, 17, 18, 22, 27, 28, 29, 30, and 31 are amended. Claims 32-35 are newly added. Claims 1-15 were canceled in a previous amendment. Claims 22-26 are withdrawn. Support for the amendments to Claims 16 and 31 can be found in Fig. 1 and numbered paragraph [0026] of the published application, for example. Support for newly added Claim 33 can be found in Figs. 1 and 2, for example. Support for the amendments to Claims 17, 18, 22, 27, 28, 29, and 30 is self-evident. Support for newly added Claims 32, 34, and 35 can be found in Fig. 1, for example. No new matter is added.

In the outstanding Office Action, an Election of Species Requirement was made defining species I as readable on Figs. 1 and 2 and defining species II as readable on Figs. 3 and 4. In response to the Election of Species Requirement, Applicants elect, with traverse, species I, indicated in the Election of Species Requirement as readable on Figs. 1 and 2, and Applicants list Claims 1-21 and 27-35 as readable thereon. Applicants further list independent Claims 16 and 31 as generic to both species.

Applicants respectfully traverse the Election of Species Requirement on the ground that the requirement has used an improper standard inasmuch as the current application is the National Stage of a PCT application under 35 U.S.C. § 371. Therefore, the appropriate standard to use regarding restriction or election requirements is provided by MPEP § 1800.¹

¹ See MPEP 801, Introduction. This chapter is limited to a discussion of the subject of restriction and double patenting under Title 35 of the United States Code and Title 37 of the Code of Federal Regulations as it relates to national applications filed under 35 U.S.C. 111(a). The discussion of unity of invention under the Patent Cooperation Treaty Articles and Rules as it is applied as an Inter-national Searching Authority, International Preliminary Examining Authority, and in applications entering the National Stage under 35 U.S.C. 371 as a Designated or Elected Office in the U.S. Patent and Trademark Office is covered in Chapter 1800.

Accordingly, the outstanding Election of Species Requirement has improperly cited MPEP § 800 in the present Election of Species Requirement.

Applicants further traverse the outstanding Election of Species Requirement under § 803 of the MPEP because the outstanding Election of Species Requirement itself refers to § 800 of the MPEP.

Applicants respectfully traverse the Election of Species Requirement for the following reason.

MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area. Accordingly, Applicants respectfully traverse the outstanding Election of Species Requirement on the grounds that, even under the standard cited in the Election of Species Requirement, a search and examination of the entire application would not place a serious burden on the Examiner. Therefore, an action on all of the Claims 1-35 is earnestly solicited.

In the Office Action dated July 26, 2006, the specification was objected to as lacking proper headings. Claims 16, 22, and 31 were rejected under 35 U.S.C. § 102(b) as anticipated by van der Lely (U.S. Patent No. 4,185,445, herein "van der Lely"). Claims 16 and 31 were rejected under 35 U.S.C. § 102(b) as anticipated by Mosby (U.S. Patent No. 4,715,172, herein "Mosby"). Claims 23-27 were rejected under 35 U.S.C. § 103(a) as obvious over van der Lely. Claims 17-21 and 28-30 were rejected under 35 U.S.C. § 103(a) as obvious over van der Lely and/or Mosby in view of Peeters (U.S. Patent No. 5,598,691, herein "Peeters").

In combination with the response filed on October 18, 2006, the present response addresses the issues set forth in the Office Action dated July 26, 2006.

Regarding the objection to the specification, headings were included in the amendments to the specification provided in the previously filed response. Accordingly, Applicants respectfully submit that the objection to the specification is overcome.

Regarding the rejection of Claims 16, 22, and 31 as anticipated by van der Lely and the rejection of Claims 23-27 as obvious over van der Lely, that rejection is respectfully traversed by the present response.

Amended independent Claim 1 recites, in part:

a main frame carrying a first gathering device including a first pick-up and at least a second gathering device including a second pick-up, the first and second pick-ups configured to move products lying on the ground directly from the ground upward and onto first and second swathing devices, respectively, and having an inner end located toward a middle portion of the machine, the first and second pick-ups situated substantially one beside another with respect to a direction of travel of the machine traveled during grouping; and

a first swathing device and a second swathing device respectively associated with the first and second pick-ups and located behind the first and second pick-ups with respect to the direction of travel.

Accordingly, the first and second pick-ups are configured to move products **lying on the ground directly from the ground** upward onto first and second swathing devices, respectively.

In contrast, van der Lely describes a mowing machine with mowing units configured to cut grass. The outstanding Office Action relies on the embodiment of the invention described in van der Lely shown in Fig. 5 for the features recited in independent Claim 16.² However, as shown in Figs. 5 and 7, the mowing machines (69) and (70), cited in the outstanding Office Action as first and second gathering devices, rotate about the rotary shaft (111). The rotary shaft (111) is disposed directly above the cutter bar (109), as shown in Figs. 7 and 8. The rotary shaft and corresponding reel (110) are disposed directly above the

² Outstanding Office Action, page 3.

cutter bar (109) so that the reel (110) moves material off of the cutter bar (109) toward the worm conveyor (112). Van der Lely states:

At the front the mowing device is provided with an at least substantially horizontal cutting element in the form of a cutter bar 109, extending transversely of the direction A and having substantially horizontally reciprocatory cutters. Above the cutter bar 109 a reel 110 is mounted for rotation about a rotary shaft 111, journaled in bearings in the walls 107 and 108.³

Accordingly, the reel (110) of van der Lely moves material cut by the cutter bar (109) toward the worm conveyor (112). When this movement occurs, the material is not lying on the ground. Therefore, the reel (110) does not move material lying on the ground. Instead, the reel (110) moves only the material lying on top of the cutter bar (109). In fact, as shown in Fig. 8, the reel (110) does not have direct access to the ground. Instead, the reel (110) must work in conjunction with the cutter bar (109) to separate the grass from the ground before the reel (110) moves the cut grass toward the worm conveyor (112). Accordingly, Applicants respectfully submit that amended independent Claims 16 and Claims 22-27 depending therefrom patentably distinguish over van der Lely for at least the reasons discussed above.

Amended independent Claim 31 recites substantially similar features to those discussed above regarding amended independent Claim 16 and patentably distinguishes over van der Lely for at least the same reasons.

Regarding the rejection of Claims 16 and 31 as anticipated by Mosby, that rejection is respectfully traversed by the present response.

As discussed above, amended independent Claims 16 and 31 each recite that the pick-ups are configured to move products lying on the ground directly from the ground upward onto first and second swathing devices respectively. In contrast, Mosby describes headers (11) and (12), which each include a reel (20) disposed directly above a sickle knife (17) when the header is in the working position. Fig. 4 makes clear that the reel (20) does not have

³ van der Lely, col. 7, lines 62 – col. 8, line 1.

direct access to the ground, but rather is obstructed by the sickle knife (17) connected to the table area (23). The reel (20) does not move products lying on the ground directly from the ground upward onto first and second swathing devices as recited in amended independent Claims 16 and 31. Accordingly, Applicants respectfully submit that amended independent Claims 16 and 31 patentably distinguish over Mosby for at least the reasons discussed above.

Regarding the rejection of Claims 17-21 and 28-30 as obvious over van der Lely and/or Mosby in view of Peeters, that rejection is respectfully traversed by the present response.

The outstanding Office Action relies on Peeters for the feature of a divider rake.⁴ However, Peeters fails to remedy the deficiencies discussed above regarding van der Lely and Mosby.

Applicants respectfully submit that Peeters fails to include pick-up devices configured to move products lying on the ground directly from the ground upward onto first and second swathing devices as recited in amended independent Claims 16 and 31. Accordingly, Applicants respectfully submit that no reasonable combination of the cited references would include all of the features recited in either of amended independent Claims 16 and 31.

Applicants further respectfully submit that modification of either of van der Lely and Mosby to include the above-noted feature regarding pick-ups configured to move products lying on the ground directly from the ground upward onto first and second swathing devices would render these references unsuitable for their intended uses. MPEP § 2143.01V states:

V. THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

⁴ Outstanding Office Action, page 7.

Van der Lely is directed toward a mowing machine with mowing units configured to cut grass while being pushed by a tractor. Once the grass is cut, the reel (110) moves the grass resting on the cutter bar (109) toward the worm conveyor (112). Removal of the cutter bar (109) so that the reel (110) would be exposed directly to the ground would render van der Lely unsuitable for cutting grass, its stated purpose. Accordingly, Applicants respectfully submit that a person of ordinary skill in the art would not have been motivated at the time the claimed invention was made to modify van der Lely to include all of the features recited in amended independent Claims 16 and 31.

Additionally, modification of Mosby to include all of the features of either of amended independent Claims 16 or 31 would render Mosby unsuitable for its intended use. Mosby is directed to a harvesting machine used to cut a standing crop.⁵ Removal of the sickle knife (17) to expose the reel (20) directly to the ground would prevent Mosby from cutting the standing crop. Accordingly, a person of ordinary skill in the art would not have been motivated, at the time the claimed invention was made, to remove the sickle knife (17) and arrange the reel (20) so as to expose the reel (20) directly to the ground.

Newly added claim 33 recites:

A machine as claimed in claim 16, wherein the
gathering devices do not include a cutting blade.

Accordingly, the gathering devices do not include cutting blades as recited in dependent Claim 33.

In contrast, both van der Lely and Mosby require the components cited in the outstanding Office Action as gathering devices to include cutting blades so that a standing crop may be cut and harvested. Accordingly, Applicants respectfully submit that newly added dependent Claim 33 patentably distinguishes over any reasonable combination of the cited references for at least these additional reasons.


⁵ Mosby, col. 1, lines 5-9.

Newly added dependent Claim 34 recites that the first and second gathering devices include wheels at their outer ends. In contrast, neither Mosby nor van der Lely describes the above-noted feature. Accordingly, Applicants respectfully submit that newly added dependent Claim 30 further patentably distinguishes over any reasonable combination of the cited references for at least these additional reasons.

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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